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## Bingo, Morality and the Criminal Law

Frederick J. Ludwig

Dominic Hughes, O.P.

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*The following article is based upon the belief that the wisdom and prudence of operating bingo games for humanitarian purposes should be left to the discretion of the administrators of religious, charitable and fraternal organizations, and that the criminal law should control but not prohibit bingo under such auspices.*

# BINGO, MORALITY AND THE CRIMINAL LAW

FREDERICK J. LUDWIG\*

DOMINIC HUGHES, O.P.

A BROOKLYN PASTOR may be forced to close a newly constructed recreation center that had almost untenanted notorious neighborhood pool rooms because local law enforcement authorities suddenly ceased to ignore bingo games that made mortgage payments possible.<sup>1</sup> A teaching sister, principal of a parochial school in California, is about to stand trial and risk the stigma of conviction as a criminal because a child naively believed that the local district attorney would buy a chance on a school raffle if only he would ask him.<sup>2</sup> In Pennsylvania, an American Legion post commander is under arrest and has lost his job as public school teacher for similar fund raising activity.<sup>3</sup>

Should these individuals be considered criminals? Is gambling really morally wrong in itself or does it become wrong only under certain circumstances? And specifically, are bingo, lotto, raffles or lotteries when conducted under proper auspices still so dangerous to the public welfare as to require not merely regulation but complete suppression by the criminal law?

The adoption by 3 to 1 of a referendum in New Jersey in 1953 authorizing bingo, lotto and raffles by licensed educational, charitable, patriotic, religious and public spirited bodies, has made more insistent the demand for similar law revision in other states. In 1954 a half dozen such proposals were introduced in the New York State Legislature and other

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\* For a biographical sketch of the authors see pages 78, 79.

<sup>1</sup> N. Y. Times, Oct. 12, 1954, p. 52, col. 2.

<sup>2</sup> For fuller report of this case, see page 74.

<sup>3</sup> N. Y. Times, Sept. 10, 1954, p. 25, col. 6.



*The person in the above photograph is playing six cards or boards in a single game. The detached sheets in the upper left corner will be used for the special games. The ball marked 68 in the center of the photograph is drawn from the drum by the person operating the game and appears here only for illustrative purposes.*

states will undoubtedly follow suit. With the exception of a few states such as Nevada, however, there seems to be no great public demand to remove virtually all restrictions on gambling, particularly professional gambling.

Consequently the present discussion is limited to the question as to whether certain forms of gambling operated on a non-professional basis by religious, charitable or fraternal organizations for laudable purposes should be prohibited or merely regulated by law.<sup>4</sup>

It is proposed to examine the problem in the light of moral norms and of legislative and judicial experience. Before the contours of workable legislation may be suggested, however, some pertinent facts concerning gambling should be considered and the moral norms should be defined.

<sup>4</sup> For a good summary of the case against gambling casinos as they are operated in Germany, see Ermecke, *The State and Legalized Gambling*, II *Theology Digest* 94 (1954).

## I

### *This Wagering World*

With the doubtful exception of the Eskimo,<sup>5</sup> all contemporary societies are characterized by the human aleatory urge. Absence of money hardly explains the Eskimo's lack of conformity, since his canoes, weapons and jade could be staked. More primitive societies, without monetary media, have bequeathed archaeologists not only their own but also the bones of animals characteristically cubed and marked. The essential humanity of the Eskimo, however, has been established beyond reasonable doubt by occasional cosmopolitan tribesmen who, having mingled with white men and Indians, have returned to exhibit the proof of their conversion, cards and dice.

Elsewhere in the world where the climate has perhaps less chilling effect on human ardor, the problem of gambling is presented.<sup>6</sup> Except in some Anglo-American areas, governments have sought to monopolize, control, regulate, license or tax gambling, but not to prohibit it.

Such is the case of Monaco, capital of the world's spinning industry since 1863, with its  $\frac{1}{10}$ ths of a square mile of sovereignty on the Mediterranean. Ten percent of its annual \$3 million budget is raised by a tax in like amount on the gross intake of Monte Carlo. The casino belongs to an intricately organized stock company euphemistically labeled The Sea Bathing Society. Three-quarters of its shares are distributed among 30,000 Frenchmen who cannot be wrong about this investment. Sea Bathing stock has current capital value of about \$15 million. Idle maharajahs, shahs soaked in royalties from Near East oil and an occasional dethroned pharaoh mingle at baccarat with ordinary American millionaires. A poor man's Monte Carlo on exactly the opposite side of the world is the casino in Macao leased for  $\frac{1}{4}$  million annually by

the Portuguese Government. Tattered Cantonese coolies, weary of mah-jong tiles and fan-tan played with wooden cards at home, may take their dizzy spin at roulette alongside some opulent oriental despot.

From Macao to Monte Carlo, most governments differ only in the nature and degree of their participation in gambling and its proceeds. Least disguised participation is outright ownership and operation. The state lottery in practically every non-English speaking country of the world is the most common type. In lands of the Hispanic tongue, purchase of a lottery ticket is virtually fulfillment of the highest civic duty and, at the same time, less painful than paying the tax collector. The Christmas *gordo* at Madrid is a national lottery in which not less than 90 percent of the men, women and children participate. Full tickets are sold at \$50 apiece but fractional shares for a peso or two are available to the most impoverished peasant. In 1949, the grand prize of \$375,000 was won on a ticket owned and shared by a village of 1500. Havana, capital of the Latin-American gambling world, and also seat of government in Cuba, operates the largest lottery in the Western Hemisphere. About \$7½ million is raised annually for charity, and another \$2¼ million for government revenue. The Government Lottery Building is the most imposing structure in the capital city of Mexico, from which a 40 million peso national lottery is conducted. Hardly a peon is without his fraction in a ticket on the day of drawing. Such popular participation is due not only to allotment of 65 percent of the stakes in prizes but also to sharp limitations (by Latin-American standards) imposed by Mexico on other forms of gambling. Chief beneficiaries of this national lottery, besides the holders of winning tickets, are hospitals, orphanages and alms-houses.

In Italy, along with tobacco, salt and quinine, gambling is a government monopoly yielding yearly more than \$26½ million, which is 1¼ percent of all revenue. The state lottery there is conducted weekly. An interesting Italian variation is that of not only an

<sup>5</sup> Cf. Stefansson, *My Life with the Eskimos* (1913) *passim*; Stefansson, *Here is Alaska* 90 (1943).

<sup>6</sup> See N. Y. Times, Dec. 4, 1951, p. 36, col. 2, 3.

annual sweepstake based on horse racing at Marengo, but also one on automobiles, at Monza. French lottery tickets, available since 1923, are distributed through 10,000 outlets in the country. A tenth share in a ticket can be had for as little as 100 francs (about 28 cents) — yet over \$85 million is annually invested. A hard-headed, realistic French government continues its opposition in principle to gambling, and accordingly in practice allots only 60 percent of the stakes for prizes retaining the balance after expenses for its own treasury. In this respect France is less bountiful with participants and less philanthropic with proceeds than the lottery departments of Cuba and Mexico. Scandinavian governments not only own and operate national lotteries but, in addition, impose heavy taxes: about half on the purchase price of all tickets and, in addition, as much as 20 percent on winnings. In Sweden, surplus proceeds go to Red Cross hospitals, museums and the support of music, art and drama. Swedish lotteries are conducted on a comfortable margin of profit. A stake of 13 krona (about \$2.52) in Stockholm assures the ticket holder of two chances in 1,250,000 of winning a capital prize of \$19,500.

Nor is the national lottery only an occidental institution. In five post-war years the Japanese have bought 16 billion yen (360 to the dollar) worth of tickets hopeful, with characteristic oriental humility, of winning at least one of the eight annual prizes of a million tax-exempt yen. The lottery monopoly in Japan belongs to the central and prefectural governments which have recently made the humanitarian gesture of extending this revenue raising privilege to 80 air-raid torn cities. India, of course, conducts the world famous Calcutta Sweepstakes and numerous bazaars, where a numbers game variation of the lottery uses quotations from the Liverpool and New York Cotton Exchanges to identify winning tickets.

The general prohibition against lotteries in English speaking countries includes neither Australia, New South Wales nor New Zealand, where there has been heavy play on

daily lotteries since 1931 with proceeds for the benefit of hospitals. And, of course, there is the world-famous Irish Hospital Trust, whose sweepstakes tickets have been annoying postal authorities in England and America for decades.

The national lottery is not the only government monopoly in gambling. In Uruguay, Chile and the Argentine, croupiers in roulette and baccarat casinos are actually government employees. The Italian Government, which monopolizes gambling, also controls betting in football pools and dog and horse racing. In Scandinavia, where there is state operation of similar wagering there is careful control in the interest of moderation. Betting must be spaced to allow intervals of breathing, and in *buole*, a game of Scandinavian roulette with a whirling rubber ball in a bowl of nine indentations, the maximum stake permitted is \$1.40.

Most typical government participation is, of course, licensing and taxing various sorts of gambling and gamblers. Throughout the British Commonwealth, bookmakers enjoy considerable social prestige and call themselves "turf accountants," a euphemism that has spread far beyond the British Isles. In Australia, these accountants are carefully screened by police and considered excellent character witnesses in the courts. In Germany, they are bonded, sharply limited to a few hundred in number, and must deal with their clients on a strictly cash basis but may operate as many as six branch offices apiece. In France, there are 900 off-track licensed offices of *Pari-mutuel Urbain*, found chiefly in sidewalk cafes and bars.

Except in Mexico, gambling casinos featuring roulette and baccarat are commonly licensed throughout Latin America, when they are not run openly by the government itself. The French collect about \$5 million annually in revenue from over 150 such establishments. Italy tolerates three casinos, making this slight concession of government ownership to private enterprise, but assuring itself sufficient lira in exchange to make the venture worthwhile.

In this enormous world-wide undertaking under government auspice and sponsorship there are, of course, occasional scandals. A few years ago Seiichi Suzuki, dignified member of the Japanese House of Councillors, took a disastrous spin at the bicycle tracks, scattering 300,000 yen that belonged to the Government. In Cuba, a president has been accused of using about 45,000 lottery tickets for himself and his friends. Yet in none of these countries with considerable gambling under government control has there developed bribery, corruption, racketeering and the influence of organized crime on politics which has characterized gambling operations in the United States.

Only in the United States, where prohibition is most extensive and absolute is there correlation between gambling, on the one hand, and official corruption and racketeers, on the other. American gambling entrepreneurs would hardly be found at a prayer meeting, even in a prison chapel. Most have been alumni of the prohibition era, shake-down rackets, confidence games and assorted gangs like Murder, Incorporated. Lawful betting is limited generally to on-track, pari-mutuel machines at 86 horse race establishments representing a \$1¼ billion investment in 25 states. About \$1¾ billion is wagered annually on the machines and yields revenue of about \$35 million in New York alone, and \$100 million in the other states. The \$1¾ billion may not represent actual out-of-pocket investment of thoroughbred enthusiasts, since much of this amount is made up of re-invested winnings. But neither does it represent all of the betting on race horses. Some estimate that illicit bookmakers off-track take five times that amount. There is support for this estimate in the one million circulation claimed by the *Morning Telegraph* and *Daily Racing Form*, which are not usually read for their editorials or cooking recipes.

If the United States has the most gamblers (50 million according to estimates) and wagers the most money (\$20 billion according to the Kefauver Committee) under the most restrictive prohibitions, the British at

least deserve the distinction of having the highest ratio of backers (4 out of 5 adults) and the most moderate per capita annual stake (\$5.60 a head) under more relaxed controls. Exceeding betting on horses and dogs in pari-mutuels and with turf accountants (the dogs are more popular by £60 million) are the weekly football pools to which a third of the adult population subscribe by postal money order. For a six penny (7 cents) stake, a capital prize of £104,000 can be won, provided odds of 700 million to 1 are overcome. All told, from the £50 million wagered annually, the Exchequer realizes £12 million in revenue, and the postal authorities obtain a tenth of their volume in mail and 60 percent of their money orders.

There is another kind of gambling which is merely betting on prices.

"Men, buy or sell cotton or corn for future delivery, without ever intending to handle or distribute the actual commodities, but merely with a view to closing the contract before it is due, and profiting by the fluctuation of prices. A man may buy and sell stocks and shares in the same way."<sup>7</sup>

These contracts are legally recognized and socially acceptable. The state tries to control their abuse rather than eliminate their use, and citizens who engage in such contracts-of-chance are not stigmatized as criminal.

From the foregoing facts it seems clear that gambling in general is not universally considered intrinsically wrong or inimical to the well-being of the state or its citizens. Moreover, even in countries where religions as diverse as those of the Scandinavian or Italian peninsulas or the cultures as different as those of France and Japan, gambling is not condemned out of hand. Distinctions are made among the various forms of gambling and legitimate legislative control is enacted and enforced. It is felt that in this way the freedom of the individual is guaranteed, and respect for the state and its social function augmented.

<sup>7</sup> Paton, Gambling, in 6 Hastings, Encyclopedia of Religion and Ethics (1908-27).

Yet a contrary attitude has been adopted in many parts of the United States.

## II

### *Anglo-American Prohibitions*

"The urge to gamble," Heywood Broun observed, "is so universal and its practice so pleasurable that I assume it must be evil."

That assumption is unfortunately and unforgettably part of the Anglo-American atmosphere which produced the rigorous Blue Laws of the New Haven Colony. These laws were expressive of a theoretical background which tended to identify character with the tradesman virtue of thrift. Among those who turned from the serious business of religion to the religion of serious business gambling was considered essentially anti-social.

Herbert Spencer<sup>8</sup> formulated the doctrine for the Victorians by describing gambling as pleasure won at the pain of another. Looking to the abnormal effects in addicts rather than the nature of the act itself, Spencer generalized that gambling sears sympathy, hardens egoism, and thereby produces a general deterioration of character. Much the same attitude is fictionally represented by disreputable characters in Thackeray's "Virginians" and Stevenson's "Kidnapped." Even today the attitude perdures. Dr. Ashley Moore unqualifiedly asserts<sup>9</sup> that gambling involves a kind of stealing for the winner, prodigality for the loser, and a perversion of man's objective on earth, since gambling glorifies, not God, but "lady luck." In such a theoretical atmosphere alone do prohibitions against all forms of gambling arise.

Yet the early English common law did not consider gambling unlawful. The utmost freedom for gambling among Anglo-Saxons was continued by the common law without significant interruption until the early Victorian era. Lotteries, games of cards and dice, and

private assemblies playing for money, were lawful at common law. Such gambling did not amount to an offense unless notorious or constituting a public nuisance because tending to provoke breach of the peace or to corrupt public morals.<sup>10</sup> Various early statutes undertook to limit games generally rather than gambling.<sup>11</sup> Their purpose was primarily to prevent diversion from military drills and daily toil, as was the case in Roman Law. The most important of these in 1541 (33 Hen. VIII, c.9), was entitled "A Bill for Maintaining Artillery, and the Debarring of Unlawful Games." A forty shilling fine was imposed for each day that anyone kept for gain "any common house, alley or place of bowling, coyting [fowling] . . . tennis, dicing-table or carding . . . or any unlawful new game now invented or . . . hereafter to be invented. . . ." Craftsmen, laborers and servants were forbidden to play such games, except at Christmas. A series of later statutes sought to curtail betting by imposing ceilings upon losses at one sitting of £100 (17 Car., II c.7), and later £10 (9 Anne, c.14). However, most of these statutes were repealed including that of Henry VIII insofar as it affected games of skill. Although lotteries had been declared public nuisances in 1698 (10 Wm. III, c.23), official ones flourished under acts of Parliament yielding more than £345,000 annually between 1793 and 1824. A cascade of gaming and betting statutes beginning in 1845 and culminating in 1934, virtually outlawed all wagering except upon football pools, and horse and dog racing.<sup>12</sup>

After long and lucrative experience with lotteries in the eighteenth century under the common law, state legislatures piously proclaimed the perversity of gambling in the first half of the nineteenth century. In the eighties, Anthony Comstock, self-appointed

<sup>8</sup> Spencer, *Principles of Ethics*, Part III, *The Ethics of Individual Life*, c.7, §227 (1893).

<sup>9</sup> Moore, 69 *Christian Century* 218f. (February 20, 1952).

<sup>10</sup> 2 Russell, *Crimes* 1386 (9th ed.); 15 Halsbury's *Laws of England* 484 (2d ed.); 4 Bl. Comm. 41, 171; *People v. Jackson*, 3 Denio 101 (N. Y. 1846).

<sup>11</sup> Collected in 1 Hawkins, *Pleas of the Crown* 721 *et seq.* (Curwood ed.).

<sup>12</sup> 15 Halsbury's *Laws of England* 495, notes (2d ed.).

public defender of virtue, published his *Traps for the Young and Gambling Outrages; or, Improving the Breed of Horses at the Expense of Public Morals* and vehement Victorianism was codified, remaining virtually unchanged today. The pattern of prohibition involves numerous penal provisions (32 sections of penal law in New York) in all states except Nevada, that (1) make criminal maintenance of gaming and betting houses, and possession, sale and rental as well, of gambling apparatus and implements; (2) penalize professional gamblers, game keepers and bookmakers, as distinguished from casual players; (3) punish particular forms of gambling such as lotteries and policy, regardless of the habitual or casual nature of participation; (4) prohibit activities of touts and shills who persuade others to visit gaming houses; (5) make cheating at gambling criminal; (6) impose special duties on shipmasters, as well as on owners, agents and superintendents of buildings, to suppress gambling on vessels and premises; (7) outline responsibilities of magistrates and district attorneys for the destruction of gambling implements and slot machines, and the disposition of their contents; and (8) make void wagering contracts, and give the loser an action to recover his stake.

The constitutions of 32 states, including that of New York since 1821, prohibit legislative authorization of lotteries,<sup>13</sup> and statutes in most states make the contrivance of one a felony. The controversial interpretation of the elements of a lottery, *viz.*, (1) a consideration, (2) a prize, and (3) a chance to win, has dual significance in such states: it sets

limits both to the sorts of games that are criminal and also the ones that a legislature may sanction at any time. "Bank night" schemes whereby patrons, in addition to admission to a theater, may also draw by chance a prize, are generally held lotteries because the price of admission supplies the element of consideration. Courts are divided, however, where participants are not required to purchase admission tickets, some finding consideration in the proprietor's benefit of increased attendance,<sup>14</sup> and others refusing to do so.<sup>15</sup>

When in 1951, the federal government imposed a tax of ten percent on all wagers, and a \$50 occupational tax on all persons accepting them,<sup>16</sup> American bookmakers proved that they are, after all, a shy and reticent group. In the first month, only eight in the New York metropolitan area and about 1200 in the entire nation came forward, paid the tax and thus disclosed their precarious (under state statutes) profession.<sup>17</sup> The use of the mails, or common carriers, for the importation of lottery tickets and advertising matter has for many years been prohibited by federal statutes.<sup>18</sup>

Notwithstanding this overall Anglo-Amer-

<sup>13</sup> Constitutions: Ala. Art. IV, §65; Ark. Art. XIX, §14; Cal. Art. IV, §26; Colo. Art. XVIII, §2; Del. Art. II, §17; Fla. Art. III, §23; Ga. §2-204; Idaho Art. III, §20; Ill. Art. IV, §27; Ind. Art. XV, §8; Iowa Art. 3, §28; Kan. Art. 15, §3; Ky. §226; Mich. Art. V, §33; Minn. Art. IV, §31; Miss. Art. IV, §98; Mo. Art. III, §39(9); Mont. Art. XIX, §2; Neb. Art. III, §24; Nev. Art. IV, §24; N. Y. Art. I, §9; N. D. Art. I; Ohio Art. XV, §6; Ore. Art. XV, §4; R. I. Art. IV, §12; S. C. Art. 17, §7; S. D. Art. III, §25; Tenn. Art. XI, §5; Tex. Art. III, §47; Utah Art. VI, §28; Va. §60; Wash. Art. 2, §24.

<sup>14</sup> *Grimes v. State*, 235 Ala. 192, 178 So. 73 (1937); *State v. Dorau*, 124 Conn. 160, 198 Atl. 573 (1938); *Iris Amusement Corp. v. Kelly*, 366 Ill. 256, 8 N. E. 2d 648 (1937); *Commonwealth v. Wall*, 295 Mass. 70, 3 N. E. 2d 28 (1936); *State ex rel. Hunter v. Fox Beatrice Theatre Corp.*, 133 Neb. 392, 275 N. W. 605 (1937); *Wink v. Griffith Amusement Co.*, 129 Tex. 40, 100 S. W. 695 (1936); *State v. Wilson*, 109 Vt. 349, 196 Atl. 757 (1938).

<sup>15</sup> *Affiliated Enterprises v. Rock-Ola Mfg. Co.*, 23 F. Supp. 3 (N. D. Ill. 1937); *State v. Hundling*, 220 Iowa 1369, 264 N. W. 608 (1936); *State v. Stern*, 201 Minn. 139, 275 N. W. 626 (1937); *State v. Eames*, 87 N. H. 477, 183 Atl. 590 (1936); *State v. Horn*, 16 N. J. Misc. 319, 1 A. 2d 51 (1938); *People v. Shafer*, 160 Misc. 174, 289 N. Y. Supp. 649 (County Ct. 1936).

<sup>16</sup> 26 U. S. C. §§3285-3294; *United States v. Kahrigier*, 345 U. S. 22 (1953).

<sup>17</sup> N. Y. Times, Dec. 6, 1951, p. 40, col. 1.

<sup>18</sup> 18 U. S. C. §§1301, 1302; 19 U. S. C. §1305.



ican prohibition of gambling, a number of explicit exceptions have been made:

1. In England, a lottery promoted as an incident of an entertainment, fete or bazaar; or a private lottery by members of a society, provided all proceeds less expenses are devoted to prizes and there is no advertising, are excepted from unlawful lotteries.<sup>19</sup> The latter provision is also effective in one American state.<sup>20</sup>

2. Twenty-five states, by constitutional or statutory provision, make lawful pari-mutuel betting on races of horses, or both horses and dogs.<sup>21</sup>

3. Six states permit racing exhibitions for prizes, either at agricultural fairs or otherwise, but apparently forbid betting by spectators.<sup>22</sup>

4. In two states certain games of chance such as pinball machines are exempted if the prize is only the opportunity to replay.<sup>23</sup> A third state licenses punchboards and certain other games.<sup>24</sup>

5. At least eight states permit conduct of

various games of chance, such as bingo and beano,<sup>25</sup> or whist and bridge,<sup>26</sup> for purposes including religious, charitable, fraternal, educational or civic ones.

Should these exceptions be extended, and if so, under what kind of control?

If gambling is essentially evil of course, there could be no support among religious groups for a relaxation of the criminal laws against it.

If, on the other hand, gambling is not essentially evil but may become an evil under certain circumstances, one may inquire whether it is possible to subject the first and fifth of the foregoing exceptions to such adequate supervision and control as to make some relaxation of the criminal laws advisable.

The problem will be examined first from the moral aspect.

### III

#### *Bingo and the Moral Law*

George Washington, the first President of the United States, was also the first purchaser of a ticket in a lottery of the Continental Congress to raise funds for the Revolution. In 1665, New Amsterdam had raised funds for the poor by running a lottery and found nothing sacrilegious about awarding bibles to winning ticket holders.<sup>27</sup> In the colony throughout the Eighteenth Century, private lotteries were specifically authorized to raise funds for a wide range of purposes, including defense fortifications, education and charity. After the Revolution, the New York Legislature authorized lotteries for humanitarian

<sup>19</sup> The Betting and Lotteries Act of 1934, 24 & 25 Geo. V, c. 58.

<sup>20</sup> Mont. Rev. Code §94-2425.

<sup>21</sup> Ariz. Code §73-1605; Ark. Stat. §84-2714; Cal. Bus. & P. Code §19662; Colo. L. 1949, c. 207; Del. Const. Art. II, §17, Code tit. 11, §669(b); Fla. Stat. c. 550.16; Ill. Stat. Ann. §59.12; Ky. Rev. Stat. §436.230 (4); La. Stat. Ann. §4:148; Me. Rev. Stat. c. 77, §15; Md. Code Ann. art. 78B; Mass. Stat. Ann. c. 128A; Mich. Comp. Laws §431.13; Neb. Rev. Stat. §28-961; Nev. Comp. Laws §10201; N. H. Rev. Laws c. 171, §15, as amended L. 1945, c. 117, L. 1949, c. 24, L. 1953, c. 117; N. J. Const. Art. 4, §7, ¶2; N. J. Stat. Ann. §5:5-22 *et seq.*; N. M. Stat. Ann. §62-606; N. Y. Const. Art. I, §9, L. 1940, c. 254, §2; Ohio Rev. Code §3769.08; Ore. Rev. Stat. §462.1 *et seq.*; R. I. Gen. Laws c. 12, §12; S. D. Code §53.0503; Wash. Rev. Code §67.16.060; W. Va. Code §2200 (18,21).

<sup>22</sup> Ind. Stat. Ann. §10-2307 (a-i); N. D. Rev. Code §12-2306; Pa. Stat. Ann. tit. 18, §4699.5; Tenn. Code Ann. §11296; Vt. Stat. §8555; Va. Code §18-281.

<sup>23</sup> Ill. Stat. §37.271; Ky. Rev. Stat. §436.230(5).

<sup>24</sup> Idaho Code Ann. §18-3801.

<sup>25</sup> Ind. Code §10-2307b (8); Me. Rev. Stat. c. 126, §21 *et seq.*; Md. Code Ann. art. 27, §317 *et seq.* (some counties); Minn. Stat. Ann. §614.054; N. H. Rev. Laws c. 171A, inserted by L. 1949, c. 292, L. 1951, c. 153; N. J. Stat. Ann. c. 5:8-50-8-76; c. 5:8-24-8-49; R. I. Gen. Laws c. 612, §56, as amended L. 1941, c. 1072.

<sup>26</sup> Mass. Laws Ann. c. 271, §22A (1953 Supp.).

<sup>27</sup> Levenson, *Science of Chance* 171 (1950).

fund raising in practically every year from 1778 to 1821.<sup>28</sup>

From such governmental lotteries virtually every college in colonial America received funds. The very founding of Kings College (Columbia University) was made possible by public over-subscription to a lottery authorized by the General Assembly of New York in 1746. The College of Physicians and Surgeons received \$45,000 from such lotteries. Hamilton College obtained \$40,000 in this manner in 1814 and Union College received over \$280,000 from similar lotteries in New York in 1805 and 1814.<sup>29</sup> When in 1821 New York adopted a constitutional amendment prohibiting such legislatively authorized lotteries, the proposal was vigorously opposed in the Convention by Chancellor Kent.<sup>30</sup>

Whatever may be the prudence of lotteries under legislative auspices there seems to be no doubt that the history of the State of New York has demonstrated that humanitarian fund raising by games of chance did not destroy the moral fibre of society but rather succeeded in advancing health and learning. Yet a marked difference is to be found in the legislative attitude today. What was once charitable has now become criminal. What the New York Legislature, for instance, once sponsored it has now declared illegal. The dilemma is clear. Either the early laws permitted and sponsored immoral conduct or there are certain circumstances under which games of chance are morally permissible.

To solve the problem one must ask himself: "Is gambling in and of itself, prescind- ing from special circumstances, essentially evil?"

There are two elements in gambling. One is the playing of a game. The other is the risking of money or something of value to be

won or lost on the issue. The mere playing of games is patently not immoral unless we are to disinter the code of ethics which regarded all recreation as immoral. If gambling is immoral, therefore, the evil must lie solely in the risking of money on the outcome of the game.

Games are designed for recreation; to give pleasure; to distract one from the cares of everyday life and to refresh him for further efforts. Recreation of one sort or another is essential to human life, especially amidst contemporary strain or monotony and games are a most important factor in recreation. Some games are essentially games of skill. Yet the outcome of almost any game of skill between two well-matched opponents may easily turn upon some uncontrollable accident. A football bouncing out of bounds on the one yard line rather than over the goal line may well decide a national championship. A pebble on the diamond won the deciding game of the 1925 World Series for the Pittsburgh Pirates.

Of course some games contain a higher element of chance than others. The distribution of cards or tiles may well offset the advantage which skill and experience has given a particular player in a single game of bridge or Scrabble. In still other games the need for skill is almost negligible. The game of bingo can hardly be called a game of great intellectual or muscular endeavor. Yet it need not be denied the name recreation.

In some games the use of one's skill and the thrill of competition are sufficient to keep interest high. As a rule, however, interest is likely to lag in proportion as the amount of skill required or the amount of competition afforded lessens. But when interest lags the recreational element of the game suffers. Consequently a bet or wager is sometimes proposed to revive interest in the outcome of the game.

It is submitted that the wager itself is not evil. The playing of a game for a prize which the participants have provided is no different in principle than playing a game on television for a prize which has been offered by a soap

<sup>28</sup> VII N. Y. State Constitutional Convention Committee 417-18 (1938).

<sup>29</sup> Blackmar, *History of Federal and State Aid to Higher Education in the United States* 147 (1890).

<sup>30</sup> 3 Lincoln, *Const. History of N. Y.* 45 (1906).

company. In either case abuses may creep in but the abuses should be distinguished from the principle. But if neither the game nor the element of luck nor the playing for a prize can be declared essentially evil, gambling cannot be condemned as evil per se, unless it necessarily involves some other factor from which it cannot be divorced and which renders it immoral. But as will be shown no such necessary element has ever been demonstrated. Gambling may be and is abused but the objections which have been raised against it are invariably reducible to circumstances which are not always and necessarily present.

Therefore, gambling should not be condemned unreservedly. Instead one should look to the circumstances surrounding the game and the wager. It would certainly be morally wrong for the father of a family of moderate means to squander his entire month's salary in a crap game. But it would not be essentially immoral for friends to determine who should pay a dinner check by casting dice. In the former case the recreational element has been pursued at the expense of duty to home, family and possible creditors. In the latter case there has been no abuse; what is essentially a harmless and even wholesome pastime has not been carried to such an excess as to become an overwhelming passion.

But, if gambling is to remain truly recreational and therefore morally permissible the following conditions must be present:

1. The game itself must be one which is wholesome and free from factors which would make it wrong regardless of the element of betting. Thus Russian roulette is forbidden. In this game the player twirls the barrel of a revolver containing but one bullet and then presses the muzzle of the revolver to his head and pulls the trigger with the hope that the bullet is not in line with the firing pin. By its very nature Russian roulette involves a grave and unnecessary risk of one's life and is therefore morally wrong regardless of concomitant betting.

2. The game must not become an all absorbing passion to the detriment of one's duties in life.
3. The player must be free to play or not.
4. The game must be honestly played.
5. There must be an equitable distribution of the risk of loss and the hope of gain. The elements of risk should be apparent or ascertainable.
6. The one who gambles must be free to dispose of and be able to afford the loss of the money or goods which he wagers.

Only such money as is not required for other things is admissible in lotteries or games of chance of any kind. By this restriction the moral law binds one's conscience much more strictly than any civil statute could hope to bind. But unless a person uses his money to the physical and moral detriment of himself or others, he should be free to dispose of his goods as he sees fit.

In spite of the almost complete prohibition against gambling in most American jurisdictions, some types of gambling games such as bingo and lotteries have been played publicly from time to time in almost every state. As a rule they are operated by religious, charitable, educational or fraternal organizations and they frequently have the tacit approval of police officials who draw a distinction between professional and humanitarian benefit games in their enforcement of the laws.

The game of bingo, which has been the center of much controversy over the enforcement or amendment of gambling laws, draws its wide popularity from its relative simplicity:

"For a fee — generally \$1 — each player is given one or more cards, ruled off into squares containing printed numbers. There are thousands of combinations of numbers from 1 to 75, so that in an honest game no two cards are alike. The operator of the game, the 'caller,' picks numbers at random from a container (generally a bird-cage-like affair filled with numbered

balls), and yells out each number as he selects it. If a player has the called number on his card, he covers that square with a marker. The object of the game is to cover five squares in a row, either on a straight line or a diagonal. Occasionally the game is varied to require the forming of an 'X,' an 'H' or a 'T,' or even the filling of all the squares on the card."<sup>31</sup>

The game is centuries old, of Italian origin and has had many names. As keno, it was played in New Orleans on a large scale after the Mexican War, found its way to New York by 1857, and swept the nation after the Civil War. Under control of professional gamblers, keno failed to survive the Comstockian crusade of the Eighteen-eighties. The depression of the Thirties saw its renaissance as "housey-housey" in London, and finally as lotto and bingo in American motion picture theatres, country fairs and church bazaars. The onomatopoeic "bingo," once slang for cheap British brandy, was probably borrowed from its second use in the jargon of sports where it designated at one time a scoring impact.<sup>32</sup>

Probably no one would claim that bingo as a game, prescinding from its use as a means of gambling, is morally evil. Indeed, as *lotto*, it has been a popular children's game for years. When played for prizes, however, especially under the auspices of professional gamblers, of course, the dangers of abuse are fairly evident but it is perfectly possible for bingo under charitable or fraternal operation to satisfy all the foregoing conditions for a morally permissible game.

Nor will occasional abuses vitiate the good in bingo. It is true that one may never do evil that good may follow. The end never justifies the means. But there are times when one may do an act from which two results will follow, one good and the other evil. The evil must not be desired for itself but merely

tolerated. The good effect may not be caused by the evil effect but both must result independently from the original act or the evil effect must proceed from the good effect. And finally, the good effect must bear some due proportion to the evil effect.

Thus live ammunition may be used to train troops to hug the ground while attacking. An occasional soldier may be killed but the training is so valuable to the vast majority as to make the risk morally permissible. The death of the trainee is not intended — not even as an example to others. But the training may save many more lives than it takes and hence is morally permissible even though an occasional accidental death may be expected.

So, too, the game of bingo may be conducted under such conditions as to make it morally permissible even though occasional accidental harm may result. The erection and maintenance of a recreation center from the proceeds of bingo can provide a powerful aid in combating juvenile delinquency. Such a project should not be condemned because an occasional mother neglects her own children to indulge an abnormal craving to play bingo wherever and whenever she can.

But it is also possible for abuses to creep in which would increase the evil effects out of all proportion to the good effects. In such circumstances bingo would become morally unjustifiable and in at least two cases Roman Catholic Bishops have forbidden Churches within their dioceses to sponsor bingo. On the other hand, there are many dioceses where the Church authorities have not seen fit to condemn bingo categorically but have left the question to the discretion of the local pastor.

It is respectfully submitted, therefore, that bingo is not an evil in itself nor is it necessarily subject to such abuse as to make its absolute prohibition necessary. On the other hand, there are some abuses which make its control by public authority desirable and even necessary. The problem of control presents serious though by no means insuperable difficulties.

<sup>31</sup> Davidson, *Is Bingo Getting Too Big?*, Collier's 34, 35 (Dec. 10, 1954).

<sup>32</sup> N. Y. Times, Oct. 11, 1954, p. 1, col. 2-3, p. 21, col. 2.

## IV

### ***Bingo and The Criminal Law***

As a means of influencing human behavior, the criminal law — drastic though it be — is extremely limited. It cannot compare with home, church and school in building character or developing desirable habits, attitudes, interests and ideals. Yet there are times when it must support and supplement the work of these other agencies in regulating the conduct of those for whom moral sanctions are meaningless.

Some proponents of laws against bingo frankly believe that all gambling is sinful.<sup>33</sup> On the other hand, the distinguished Royal Commission of Betting, Lotteries and Gaming in Great Britain in 1951, after a long study, unanimously disputes this.

“It is the concern of the state that gambling, like other indulgences such as the drinking of alcoholic liquor, should be kept within reasonable bounds, but this does not imply that there is anything inherently wrong in it.”<sup>34</sup>

With this conclusion of the Royal Commission the present authors are in complete agreement. Bingo is not an evil per se and the interests of the public can best be served by its regulation rather than by its prohibition.

The individual and social evils which have been alleged against bingo may be included under the following charges.

1. *Bingo has led to police corruption.*

But there would be no such consequent police corruption if bingo were not made illegal. And the advisability of laws against bingo is the question at issue.

2. *Bingo develops addicts who contract a passion for the game similar to the passion which others have for alcohol.*

<sup>33</sup> Moore, 69 *Christian Century* 218 (Feb. 20, 1952). For pointed reply, see Munson, S.J., 69 *Christian Century* 436-37 (Apr. 9, 1952).

<sup>34</sup> Report of Royal Commission on Betting, Lotteries and Gaming 45 (H. M. Stationery Office, April, 1951).

It cannot be denied that some unstable individuals will carry the game of bingo to excess. And for such people bingo may be morally harmful. But there is hardly a legitimate recreation that cannot be abused. Many a housewife neglects her home and children for the sake of movies, bridge, politics, club activities or the neighborhood tavern. Yet the abuses of the few should not preclude the many from the enjoyment of fundamentally wholesome or at least not necessarily harmful forms of recreation.

Most players are women, usually middle-aged or elderly. Many are unmarried and living alone; others have raised their families and do not know what to do with their new-found leisure time; still others have been given a night off while father baby-sits and watches the fights on television. For most of them an evening of bingo once a week constitutes their only social life.

One investigator claims positive advantages in bingo by improving adjustment through combating boredom. “Many middle-aged women find that time weighs heavily on their hands and the resulting boredom is often a contributing factor to conflicts in various facets of their lives.” An activity such as golf, bridge, poker or bingo may minimize their worries and reduce tension.<sup>35</sup> Dr. Edmund Bergler, well known psychiatrist and author who has treated neurotic gamblers, believes that neither legalization nor prohibition of bingo would have much bearing on whether potential pathological gamblers develop into neurotics. “The world won’t change whether you legalize bingo or not. We make a distinction between gambling as relaxation which is harmless and pathological gambling.”<sup>36</sup>

<sup>35</sup> 66 *Science News Letter* 150 (Sept. 4, 1954).

<sup>36</sup> *N. Y. Times*, Oct. 13, 1954, p. 20, col. 4.

3. *Bingo like all gambling is psychologically bad as a deadly disintegrator of personality.*

Chaucer's *Pardoner's Tale* and Dostoevski's own painful experience recounted in *The Gambler* are usually cited. Stretched on a psychiatric couch, the neurotic gambler is revealed as one with an unconscious wish to lose. On his feet and leaning on the rail at the racetrack, this masochistic patient manifests conscious overt symptoms which seem directed upon winning. But, in his heart of hearts he realizes that in the mathematical long run he is doomed and derives pleasure in inflicting this self-punishment. The sports editor of the New York Daily Mirror devoted a whole column to the exposure of an outrageous tout who was charging naive bettors two dollars a day for false inside information. Reader reaction was astounding. A deluge of letters pleaded for the tout's address and \$600 was enclosed for forwarding to him.<sup>37</sup>

No doubt there are neurotic gamblers and psychopathic personalities with neurotic tendencies to gamble. It is doubtful whether many of the 57 percent of Americans who gamble are in this category. According to Gallup, most people at the track go about once a year, are married, church-goers, and own automobiles. Forty-nine percent earn more than \$5,000 per year, 44 percent are businessmen or executives and 42 percent have their own homes. Men are slightly more addicted than women, six out of every ten of them preferring in the order named: raffles, sports, cards, punch boards, slot machines, *bingo* and horses. Among the weaker sex, only five out of ten gamble but prefer *bingo* in second place, sports in sixth and slot machines in fourth.<sup>38</sup>

4. *Bingo attracts racketeers and crooked players.*

Professional gambling undoubtedly attracts unsavory individuals and these same individuals may be inclined to take over the most honestly conducted game of bingo. Yet the methods of fixing games are well known and can be offset by the use of proper safeguards. Moreover moderation in the size and value of the game will usually discourage professional participation.

5. *Bingo defrauds the players.*

The argument is that in gambling, a roughly organized rejection of reason, alteration of the actual odds dictated by mathematical probabilities deceives the player in the long run. Bingo players know that the games are being played for a benefit and that the chance of winning is not so great as if all the money were to be paid out in prizes.

6. *Bingo has become big business.*

Bigness is a relative term and no bingo games could qualify for the classification as it applies to General Motors or United States Steel. Nor is the term accurate as applied to bingo under the auspices of religious or charitable organizations when compared to the expense of the organization's various activities. Many a pastor burdened with the necessity of raising funds to support a church, rectory, school and convent has thought ruefully that some of the hours which he had spent on the study of theology might well have been devoted to a course in corporation finance.

Yet it is a fact that bingo can become too big. If the prizes are large enough the game will likely attract professional gamblers, confirmed addicts, dishonest players and thus spawn the many evils which may be, but need not be, attendant upon it.

This last objection perhaps deserves more extensive treatment.

<sup>37</sup> Dowst, *Why Horse-Players Die Poor*, 52 Reader's Digest 76, 78 (April, 1949).

<sup>38</sup> Public Opinion News Service, April 27, 1951.

How large a sum of prizes may be safely offered can only be determined in the light of local conditions. A survey of twelve bingo games conducted by various religious, charitable and fraternal organizations disclosed the following facts about bingo as it has been conducted in a certain large city:

1. To attract enough people in this locality to make the effort worthwhile it is necessary to offer a total of about \$1,000 in prizes.

2. These are distributed as follows:

a. 20 regular games at \$25 . . . .	\$ 500
b. 5 special games at \$50 . . . .	250
c. 1 Jackpot at \$250 . . . . .	250
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	\$1,000

3. With prizes in the above amount the following results can be expected:

300 people—the games will lose money  
400 people—the games will break even  
600 people—the games will net about  
\$600

4. The average admission price is \$1.00, for which the player is entitled to one board. He may purchase additional boards for \$.25 or three for \$.50 and a few players can and do handle as many as six boards. Special and jackpot games are played on special boards or cards for which similar additional charges are made.

5. The average individual spends approximately \$2.50 to \$3.00 per night.

6. The chances of an individual winning one game during the course of an evening vary from 1-30 to 1-50 and his net contribution to the benefits for which the games are operated will be about \$1.00 to \$1.25 per night if he plays with any degree of regularity.

7. Most organizations would prefer a small dependable income from the weekly games without the circus atmosphere that attends games where the prizes in a single night might total several thousand dollars and attract bus loads of people from miles around.

8. Some advocates of bingo are frankly critical of the jackpot. The object of this va-

riation of the game of bingo is to fill an entire card within a predetermined number of chances, e.g. 46. If no one fills his card by the time 46 numbers are called the prize is held for the following week and added to the jackpot prize for that week at which time an additional two numbers are called.

The objection to the jackpot lies in the fact that the first number of chances may be set at an unreasonably low number or the game may be otherwise so regulated that the jackpot may reach an undesirably high figure before it is finally won.

9. Many organizations which in the past have run games offering prizes in excess of \$2,000 per night did so in anticipation of being forced to discontinue the games in a few weeks regardless of the nature of the prizes. Most such organizations would also prefer smaller, dependable incomes.

It is respectfully submitted that the sums of money offered as prizes in the games surveyed are not excessive for that locality and that the evils, if any, attendant on these particular games are not so great as to require their suppression by the criminal law.

Moreover, the legislature in enacting controlling legislation should bear in mind that bingo when operated for humanitarian purposes is generally patronized by people to whom the prize, while desirable, is secondary to the social enjoyment and to the painless giving to the worthy cause. For some there is a vague pleasure in planning a vacation or shopping trip in the event of their winning a prize. The very anticipation of what otherwise might have been impossible is pleasurable, even if the desired effect of a cash prize should not follow. "It was nice hoping anyway" is a normal reaction of the thousands who watch another go away with the prize.

Generally, the prize supplements a livelihood and does not supplant it. The winner enjoys his good fortune, but he will not ordinarily abandon his regular source of income to concentrate upon calculating odds in lotteries or bingo.

For those, on the other hand, who have the secondary motive of giving or making a

contribution, there is an added pleasure in games of chance. They know of the charitable organization to which they are making a contribution, and they would probably give some donation anyway. If they give more because an attraction is offered them which appeals to something other than their generosity, they are not thereby niggardly in what they are doing. They would prefer to lose to a good cause than to any other organized game, and they express their preference by their patronage. They play the game where it will do the most good — not only for themselves but for others.

Those who run games of chance in these circumstances are using a perfectly legitimate means of appealing for funds. They are aware of the mixed motives for most human action, and they are combining objectives to attract those who are neither utterly unselfish nor utterly selfish.

The good they do is, moreover, not vitiated by extrinsic conditions that have frequently brought gambling into disrepute. They are not in any way contributing to organized crime, but, as a matter of fact, more often than not, opposing it. The vices alleged as attending upon gambling, but which seem to thrive independent of it equally well, are utterly foreign to recreational gambling. They are in fact inimical to it, and it to them. Bingos, bazaars, and lotteries are attractions which distract a person not only from the cares of life but the concerns of lust, intemperance and other sinful passions. Controlled from the outset they are a pattern of activity which can educate the individual to a more generalized control of his recreational activities.

Obviously, good consequences can attend humanitarian fund raising even by games of chance. Conversely, suppression by statute of such activity often does more harm than good.

The suppression of gambling by criminal law has always been a Sisyphean task. M. Daniel Pierrot, a principal commissioner in the Sûreté and chief of its *Services de Jeux*, gambling squad of Paris, has observed:

"In reality, one does not suppress this

'vice' — or, more currently, this 'passion' — by laws. One can only channelize it. Statistics establish that outlawing it settles nothing. By flexible regulation of gambling the interests of morality, public order, public revenue and social works are all served."<sup>39</sup>

When criminal statutes postulate moral standards of conduct which are higher than those of the community and which go beyond the dictates of the moral law, sympathy for the accused by those charged with their enforcement inevitably causes such statutes to be nullified, or applied only occasionally and indifferently. One consequence of such nullification of unpopular penal provisions is breakdown of respect for criminal law and its enforcement generally. With respect to gambling no one has ever discovered any just distinction between pari-mutuel betting for the primary benefit of improving the breed of horses which is permissible, on one hand, and bingo games or charity raffles for the benefit of crippled children, which are forbidden, on the other. The danger of such nullification in application of the penal law to humanitarian fund raising by chance has been expressed with commendable frankness by the District Attorney of Suffolk County in New York.

"I don't think it is the district attorney's duty to make criminals out of clergymen, heads of veteran's organizations and volunteer firemen."<sup>40</sup>

Selective enforcement of penal statutes is the frequently sound (and often inevitable) practice in criminal law administration. Police and prosecutors must press promptly their principal attack upon the most outrageous criminals, and occasionally postpone harassing petty offenders. Gambling is usually a mere misdemeanor and enjoys slight prestige in the company of impressive felonies like murder, robbery and rape. Even a concerted drive on gamblers would begin with suppression of professional gamblers rather than the strictly amateur operators of bingo. Accord-

<sup>39</sup> N. Y. Times, Dec. 3, 1951, p. 34, col. 5.

<sup>40</sup> *Id.*, Oct. 12, 1954, p. 52, col. 5-6.



ingly, police and prosecutors alike may sometimes wink rather than frown upon such humanitarian games. Departures from such selective enforcement are rare enough to make headlines on a front page, while daily arrests by the hundreds of bookmakers and floating dice-men are buried in the bottom of columns under the obituaries.

Attempting to enforce such statutes will result in their nullification because of their unpopularity and will ultimately lead to repeal. If, under a policy of selective administration of criminal law, enlightened prosecutors and police give such statutes no priority whatsoever, there remains the danger of occasional enforcement by over-zealous but misguided officials, or private vigilantes who revere the memory of Anthony Comstock. Under either horn of this dilemma, whether enforced and then nullified by sympathetic tribunals, or selectively relegated to their proper lowly position in the scale of social values, the deleterious result will be the same.

It would seem that the answer to this dilemma lies in intelligent control by public authority. The difficulties are many but an attempt will be made to outline some of the factors which must be considered.

## V

### *Mechanics of Control*

For a hundred years, a mass of material on control of gambling has been manufactured by numerous investigations. The recent Senate Crime Investigating Committee's data on the question required an index of 370 printed pages. Proposals to legalize gambling of some sort, in addition to pari-mutuel betting, have been supported by grand juries, judges of criminal courts, and mayors, and generally opposed by governors and district attorneys. In the New York Legislature, a half-dozen resolutions to amend the State Constitution were introduced in 1954, aimed at some sort of lottery under government control to raise public revenue. Proceeds would be applied, depending on the particular proposal, either to "hospitals, schools, medi-

cal research and correctional institutions as may be prescribed by the legislature," or "in aid of hospitals and \* \* \* of combating juvenile delinquency," or "for the support of public education and public hospitals" in the City of New York, for assistance to the blind, aged and to hospitals in such city.<sup>41</sup> Two other proposals would permit private lotteries or bingo "from which the state shall derive a reasonable revenue for the support of government."<sup>42</sup>

In urgency, state need for revenue cannot compare with that of private humanitarian endeavor. Many states already derive considerable money by taxation on pari-mutuel betting. Additional revenue may be realized by increased levies on this form of wagering, or on numerous alternate subjects of taxation. Private humanitarian enterprise, frequently forbidden state aid and without power to tax, is often totally dependent on an individual generosity that has been shrinking not because of niggardly parsimony so much as frugality forced by rising living costs and income taxes. Government recognition of the high value of such endeavor is concretely conceded in tax exemption of their properties in the constitutions and statutes of practically every state. In New York, about \$2 billion worth of such exempt property is owned and operated by humanitarian societies. Accordingly, financial necessities require exception from prohibition of gambling only in favor of humanitarian groups, and not of state-operated games of chance or private ones permitted for state revenue.

To obviate possible abuses, a program of circumscribed control would involve adoption of a statute that would prescribe operating conditions and create an appropriate agency for administration. Such agency would upon its creation promulgate necessary ad-

<sup>41</sup> N. Y. State A. No. 39, Int. 39 (Jan. 6, 1954); S. No. 493, Int. 484 (Jan. 19, 1954); S. No. 1914, Int. 1786 (Feb. 10, 1954); S. No. 2280, Int. 2119 (Feb. 16, 1954).

<sup>42</sup> A. No. 299, Int. 299 (Jan. 12, 1954); S. No. 1572, Int. 1483 (Feb. 4, 1954).

ministrative regulations. In those states having constitutional provisions against lotteries and gambling, an appropriate amendment would have to precede the legislative and administrative program. A fairly workable statute — susceptible to uniform adoption — has been in operation in New Jersey for over a year. While the administrative regulations of New Jersey have been criticized as unduly restrictive, the statute itself is worthy of study by other legislative bodies.

A model statute should provide for the following problems:

**ELIGIBLE ORGANIZATIONS.** Generally, *bona fide* churches, religious organizations, educational institutions, official volunteer fire and first aid companies, and rescue squads, and charitable, veterans, fraternal, service and civic associations ought to be within the excepted group. To be eligible such groups: (1) should be organized and conducted *exclusively* for such religious, educational, public safety, charitable, patriotic, fraternal, civic or other public spirited purpose; (2) must have no officer, member or employee thereof who received or may be lawfully entitled to receive any pecuniary profit from any of the organization's operations, except reasonable compensation in effecting one or more of its purposes; (3) must devote the entire net proceeds of authorized games of chance for one or more of the purposes for which it is exclusively organized and conducted; and (4) should hold, operate and conduct such games exclusively by its active members who shall neither receive nor be lawfully entitled to receive any pecuniary profit therefor, except reasonable compensation as prescribed in regulations duly adopted by the Control Commission.

The purpose of such restrictions is to exclude pretended humanitarian organizations and professional gamblers from operation of such games. The organizations eligible are those generally entitled to tax exemption, and, consequently, well-developed bodies of case law are available in almost every jurisdiction that set the metes and bounds of such eligibility.

**AUTHORIZED GAMES.** Generally, bingo or lotto games, raffles *and other similar games*, should be the type authorized, and games involving dice, roulette or similar paraphernalia, as well as slot and like machines, should be explicitly excluded. Bingo may be defined, for statutory purposes, as a game of chance played for prizes with cards bearing numbers or other designations, five or more in one line. The holder of such card covers (or may mark) such numbers or other designations as similarly numbered objects are drawn by chance from a receptacle. The game is won by the person who first covers a series of numbers previously designated, such as horizontal, vertical or diagonal rows, or some combination of such rows, or the entire card. The game of bingo should also include sale of shares, or tickets or rights to participate in such a game.

A raffle may be defined as a game played by drawing or allotment of prizes by chance, by sale of shares or tickets or rights to participate.

The addition of an *ejusdem generis* clause, permitting conduct of similar games, is to avoid cumbersome administrative problems posed by innocuous variations of games like bingo or raffles to sustain interest of participants. The prohibition against dice, roulette and similar paraphernalia, as well as slot and other machines, is designed to discourage resort by humanitarian groups to professional gamblers for profitable operation, to prevent possible frauds and to diminish danger of acquisition of such devices by non-humanitarian groups.

**ASSURANCE OF MODERATION.** Moderate participation may be assured by specifying (1) maximum admission prices; (2) maximum cash prizes for bingo and similar games, and both cash and non-cash prizes for draw and non-draw raffles; (3) maximum number of games on a single occasion; (4) maximum number of occasions on which games may be held by month, and by year; and (5) maximum stakes for bingo and raffles. The question of maximum prizes, already the subject

of some controversy in New Jersey,<sup>43</sup> is properly a matter for administrative regulation rather than statutory fiat. A workable legislative standard for administrative action in this area should take account of the evil of undesirable competition among sponsors that might divert participants from games of their own organizations to more tempting wagers offered by others. But such standard should also be explicit to provide fairly for more liberal limits in the case of sponsors who infrequently conduct such games, such as annual bazaars, than for those who conduct them several times each month.

**PREVENTION OF FRAUD AND UNDUE ADVANTAGE.** Any cheating would continue to be criminal under present penal provisions. To prevent any overreaching, a reasonable proportion of the stakes — not less than 50 percent — should be made available as prizes. Misrepresentation of mathematical chances of winning would be grounds for cancellation of license in the Control Commission's discretion.

**ADDITIONAL SAFEGUARDS.** Sale or consumption of intoxicating beverages should be prohibited in the same room in which games are being conducted. Violations of these safeguards should be grounds for revocation of license.

**ADMINISTRATIVE SUPERVISION AND CONTROL.** To guarantee *bona fide* operation exclusively for humanitarian purposes, a Control Commission ought to be created by this statute. A sufficient number of members, representing diverse geographic, political and other segments, should be appointed by the Governor with appropriate legislative approval, for five-year terms. The terms of initial members appointed should be varied, one for a single year, another for two years and so on, in order to assure continuity of membership. Reimbursement for expenses but no compensation should be provided.

Under the proposed statute, such control body would be under duty to adopt regula-

tions for administration with respect to grant, amendment, suspension and revocation of licenses for humanitarian conduct of games of chance; to make investigations of applicants and operations; and to make continuous study of such statutes, in their own and other states.

The Commission would have power to issue subpoenas under signature of its chairman, and, after hearing, to revoke or suspend licenses for violation of the statute, or rules and regulations of the Commission.

In 32 states with anti-lottery constitutional provisions, an appropriate amendment ought to be phrased in terms of a limited exception. Such exception should not be so stringent as to permit merely two games, bingo and raffles, defined so that they may be played only in a single manner. The *ejusdem generis* clause, already indicated, would be a desirable addition to avoid necessity of constitutional amendment each time the rules of bingo happen to be amended. Yet, such amendment should indicate the organizations eligible to participate with all the stringency already suggested. Assurances of moderation, prevention of fraud and undue advantage, and other safeguards, should be matters relegated to legislative prescription by such amendment. A number of proposed constitutional amendments in one state, New York, have suggested a restriction of conduct of such games to cities with a population over a million.<sup>44</sup> But making such fund raising unavailable in less endowed rural areas where the very survival of humane organizations is often at stake can not logically be defended on any grounds.

Because amendment of state constitutions is drawn out and tedious, a more immediate remedy — not susceptible to desirable long range administration — is available even in those states where authorization of lotteries is constitutionally forbidden. Legislation

<sup>43</sup> See Davidson, *Is Bingo Getting Too Big?*, *Colliers'* 34, 38 (Dec. 10, 1954).

<sup>44</sup> A. No. 299, Int. 299 (Jan. 12, 1954); A. No. 822, Int. 822 (Jan. 20, 1954); S. No. 1572, Int. 1483 (Feb. 4, 1954); S. No. 1914, Int. 1786 (Feb. 10, 1954).

which simply removes the criminal consequences of conduct of those games of chance by such humanitarian organizations already indicated would provide direct solution. The constitutional bar against legislative authorization may simply be surmounted by retention of an exclusive penalty in favor of stakeholders in the form of a cause of civil action to recover their losses. Such penalty of forfeiture with removal of criminal sanctions has been undertaken on two occasions in favor of betting on horse racing by the New

York Legislature.<sup>45</sup> On both occasions the statutes were sustained as constitutional.<sup>46</sup> At best, however, such measure should be temporary and in the nature of a pilot project pending appropriate constitutional amendment and legislative creation of more elaborate administrative machinery to insure circumscribed control.

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<sup>45</sup> Laws of N. Y. 1895, cc. 570, 571, 572; Laws of N. Y. 1934, c. 233.

<sup>46</sup> *People ex rel. Sturgis v. Fallon*, 152 N. Y. 1, 46 N. E. 302 (1897); *Watts v. Malatesta*, 262 N. Y. 80, 186 N. E. 210 (1933).

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During the 1954 election campaign in New York State the Republican and Democratic parties both favored a referendum on bingo. In the present (1955) session of the Legislature the Democrats have indicated that they will sponsor a bill making bingo possible by removing the criminal penalties involved in the laws that implement the constitutional provision. The Republican legislative leaders favor a constitutional amendment which would have the effect of deferring legalization of the game until 1958 at the earliest.

During the first week of the 1955 Session of the New York State Legislature several bills were introduced by both parties to amend Article I, Section 9 of the State Constitution to allow bingo to be operated for the benefit of religious, charitable, veterans', fraternal, volunteer firemen's organizations and agricultural societies, as prescribed by the legislature.

Concurrently the New York State Council of Churches, representing seventeen Protestant denominations and 4,000 congregations with an estimated membership of 1,500,000 announced a strong drive against bingo.

The New York Times for January 9, 1955 reported that Reverend Mr. Roedarmel, general secretary of the Council, said in a formal report that "Legalized bingo is but another step in the breakdown of legal rules which are based on the understanding of right from wrong. There is no difference from a bet on a bingo card and a bet on a roulette wheel. The same professionals run both, the pay-off to the house is the same, the price for exclusive territories to political or law enforcement agencies is the same, and the disastrous effects on the gambler who cannot afford to lose are identical."

Over the next twelve months, the Council announced, "minutemen" will be selected to carry the anti-bingo message to churches and business organizations throughout the State.